



Schwegman ■ Lundberg ■ Woessner ■ Kluth

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: PLANT PROMOTERS AND GENES, THE EXPRESSION OF WHICH ARE ALTERED BY PATHOGEN INFECTION.

The specification of which is attached hereto.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with 37 C.F.R. § 1.56 (attached hereto). I also acknowledge my duty to disclose all information known to be material to patentability which became available between a filing date of a prior application and the national or POT international filing date in the event this is a Continuation-In-Part application in accordance with 37 C.F.R. §1.63(e).

I hereby claim foreign priority benefits under 35 U.S.C. §119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

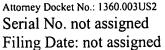
No such claim for priority is being made at this time.

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below:

Filing Date
June 23, 2000
March 7, 2001
January 12, 2001
January 26, 2001
June 23, 2000

I hereby claim the benefit under 35 U.S.C. § 120 or 365(c) of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose material information as defined in 37 C.F.R. § 1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

No such claim for priority is being made at this time.



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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Anglin, J. Michael Arora, Suneel Beekman, Marvin L. Bianchi, Timothy E. Billion, Richard E. Black, David W. Brennan, Leoniede M. Brennan, Leoniede M. Brennan, Thomas F. Brooks, Edward J., III Chadwick, Robin A. Clark Barbara J. Clise Timothy B. Dahl John M. Drake, Eduardo E. Embretson, Janet E. Forderibacher, Paul J. Fornest, Bradley A. Gamon, Owen J. Gorffe, Gregory J.	Reg. No. 24,916 Reg. No. 42,267 Reg. No. 38,377 Reg. No. 39,610 Reg. No. 32,836 Reg. No. 42,331 Reg. No. 35,832 Reg. No. 35,075 Reg. No. 40,925 Reg. No. 36,477 Reg. No. 38,107 Reg. No. 40,957 Reg. No. 40,957 Reg. No. 44,639 Reg. No. 44,639 Reg. No. 42,546 Reg. No. 39,665 Reg. No. 30,837 Reg. No. 36,143 Reg. No. 36,143 Reg. No. 36,530	Greaves, John N. Haack, John L. Harris, Robert J. Hill, Stanley K. Jackson Huebsch, Katharine A Jurkovich, Patti J. Kalis, Janal M. Klima-Silberg, Catherine I. Kluth, Daniel J. Lacy, Rodney L. Lemaire, Charles A. LeMoine, Dana B. Lundberg, Steven W. Maki, Peter C. Malen, Peter L. Mates, Robert E. McCrackin, Ann M. Moore, Charles L., Jr. Nama. Kash	Reg. No. 40,362 Reg. No. 36,154 Reg. No. 37,346 Reg. No. 37,548 A. Reg. No. 47,670 Reg. No. 44,813 Reg. No. 37,650 Reg. No. 40,052 Reg. No. 32,146 Reg. No. 36,198 Reg. No. 40,062 Reg. No. 40,062 Reg. No. 40,062 Reg. No. 42,832 Reg. No. 42,832 Reg. No. 44,894 Reg. No. 35,271 Reg. No. 42,858 Reg. No. 33,742 Reg. No. 33,742 Reg. No. 44,255	Nicholson, Lea A. Nielsen, Walter W. Padys, Danny J. Parker, J. Kevin Perdok, Monique M. Peret, Andrew R. Peterson, David C. Prout, William F. Schumm, Sherry W. Schwegman, Micheal L. Scott, John C. Smith, Michael G. Speier, Gary J. Steffey, Charles E. Stordal, Leif T. Terry, Kathleen R. Tong, Viet V. Viksnins, Ann S. Woessner, Warren D.	Reg. No. P-48,346 Reg. No. 25,539 Reg. No. 35,635 Reg. No. 33,024 Reg. No. 42,989 Reg. No. 41,246 Reg. No. 47,857 Reg. No. 33,995 Reg. No. 39,422 Reg. No. 25,816 Reg. No. 38,613 Reg. No. 45,368 Reg. No. 45,458 Reg. No. 25,179 Reg. No. 45,458 Reg. No. 25,179 Reg. No. 31,884 Reg. No. 31,884 Reg. No. 45,416 Reg. No. 37,748 Reg. No. 30,440
Gamon, Owen J. Gorਜe, Gregory J. Gor∰ch, Joseph E.	Reg. No. 36,143 Reg. No. 36,530 Reg. No. 41,791	Moore, Charles L., Jr. Nama, Kash Nelson, Albin J.		•	

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full discourse to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary.

Please direct all correspondence in this case to Schwegman, Lundberg, Woessner & Kluth, P.A. at the address indicated below:
P.O. Box 2938, Minneapolis, MN 55402
Telephone No. (612)373-6900

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

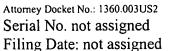
Full Name of joint invento	r number 1 : <u>Fumiaki Katagiri</u>	
Citizenship:	Japan	Residence: San Diego, CA
Post Office Address:	4503 Ocean Valley Lane	
	San Diego, CA 92130	
Signature:		Date:
· ·	Fumiaki Katagiri	
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 \underline{X} Additional inventors are being named on separately numbered sheets, attached hereto.

Attomey Docket No.: 1360.003US2 Serial No. not assigned Filing Date: not assigned

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor Citizenship: Post Office Address:	number 2: Yu-Ming Hou United States of America 3989 Nobel Drive, #361 San Diego, CA 92122	Residence: San Diego, CA	
Signature:		Date:	
Full Name of joint inventor Citizenship: PostOffice Address:		Residence: San Diego, CA	
Signature:		Date:	
1	Sheng Quan peing named on separately numbered sh	eets, attached hereto.	·
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Signature: Date: Hur-Song Chang Full-Name of joint inventor number 5: Tong Zhu Citizenship: China Residence: San Diego, CA Post-Office Address: 5260 Caminito Exquisito San Diego, CA 92130 Signature: Date: Tong Zhu Tong Zhu Full Name of joint inventor number 6: Steve Whitham Citizenship: United States of America Post Office Address: 12659 Spindletop Road San Diego, CA 92129 Signature: Date: Full Name of joint inventor number 7: Steve Goff Citizenship: United States of America Post Office Address: 1040 Calle Anacapa Encinitas, CA 92024 Signature: Date: Steve Goff Steve Goff Steve Goff Date:	Full Name of joint inver Citizenship: Post Office Address:	Taiwan 11724 Ramsdell Court San Diego, CA 92131	Residence: San Diego, CA	
Citizenship: China Residence: San Diego, CA Post Office Address: 5260 Caminito Exquisito San Diego, CA 92130 Signature: Date: Tong Zhu Tong Zhu Lill Name of joint inventor number 6: Steve Whitham Citzenship: United States of America Post Office Address: 12659 Spindletop Road San Diego, CA 92129 Signature: Date: Full Name of joint inventor number 7: Steve Goff Citizenship: United States of America Post Office Address: 1040 Calle Anacapa Encinitas, CA 92024 Signature: Date:	Signature:	Hur-Song Chang	Date:	
Full Name of joint inventor number 6: Steve Whitham Citizenship: United States of America Residence: San Diego, CA Post Office Address: 12659 Spindletop Road San Diego, CA 92129 Signature: Date: Full Name of joint inventor number 7: Steve Goff Citizenship: United States of America Residence: Encinitas, CA Post Office Address: 1040 Calle Anacapa Encinitas, CA 92024 Signature: Date:	Citizenship: Post-Office Address:	China 5260 Caminito Exquisito	Residence: San Diego, CA	
Full Name of joint inventor number 6: Steve Whitham Citizenship: United States of America Residence: San Diego, CA Post Office Address: 12659 Spindletop Road San Diego, CA 92129 Signature: Date: Full Name of joint inventor number 7: Steve Goff Citizenship: United States of America Residence: Encinitas, CA Post Office Address: 1040 Calle Anacapa Encinitas, CA 92024 Signature: Date:	Signature:		Date:	
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Full Name of joint inventor number 7: Steve Goff Citizenship: United States of America Residence: Encinitas, CA Post Office Address: 1040 Calle Anacapa Encinitas, CA 92024 Signature: Date:	Signature:		Date:	The state of the s
Citizenship: United States of America Residence: Encinitas, CA Post Office Address: 1040 Calle Anacapa Encinitas, CA 92024 Signature: Date:	the same of the sa	Steve Whitham		
	Citizenship:	United States of America 1040 Calle Anacapa	Residence: Encinitas, CA	
Steve Goff	Signature:		Date:	
		Steve Goff		

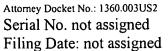
 \underline{X} Additional inventors are being named on separately numbered sheets, attached hereto.



Attorney Docket No.: 1360.003US2 Serial No. not assigned Filing Date: not assigned

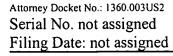
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Full Name of joint invento Citizenship: Post Office Address:	united States of America 3314 Via Alicante La Jolla, CA 92037	Residence: La Jolla, CA	
Signature:	· · · · · · · · · · · · · · · · · · ·	Date:	
_	Bret Cooper		_
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Citizenship:	United States of America	Residence: San Diego, CA	
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A I	San Diego, CA 92130		
X 1	•	Deter	
Signature:	Jane Glazebrook	Date:	· · · · · · · · · · · · · · · · · · ·
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Full Name of joint invento	or number 10 : Wenquiong Chen		
Citizenship:	China	Residence: San Diego, CA	
Post Office Address:	7514 Charmant Drive, #916		
T.	San Diego, CA 92122		
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	Wenquiong Chen		
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X Additional inventors are	heing named on separately numbered she	ets attached hereto	



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Full Name of joint inven Citizenship: Post Office Address:	tor number 11 : Zhiyi Xie China 8933 Lombard Place, #226 San Diego, CA 92122	Residence: San Diego, CA	
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Full Name of joint inven Citizenship: Post Office Address:	tor number 12 : <u>Yi Tao</u> China 3851 F Miramar Street La Jolla, CA 92037	Residence: La Jolla, CA	
Signature:	Yi Tao	Date:	
Full Name of joint inven Citzenship: Post Office Address:	tor number 13 : Guangzhou Zou China 10972 Cloverhust Way San Diego, CA 92130	Residence: San Diego, CA	
Signature:	Guangzhou Zou	Date:	
Full Name of inventor: Citizenship: Post Office Address:		Residence:	•
Signature:		Date:	



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§ 1.56 Duty to disclose information material to patentability.

A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(1) prior art cited in search (2) the closest information pending claim patents (4) Under this section, information of record in the application, and Under this section, information is material to patentability when it is not cumulative to information already of record or being Ξ

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

Individuals associated with the filing or prosecution of a patent application within the meaning of this section are: (c)

- (1) Each inventor named in the application:
- Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, (d) agent, or inventor.